



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0114]

RIN 1625-AA87

**Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is amending the established security zone extending 50 yards into the navigable waters of the Oakland Estuary, Alameda, California, surrounding the Coast Guard Island Pier. This security zone change will now include the entire perimeter of Coast Guard Island and 50 yards on either side of the Coast Guard Island causeway (Dennison Street Bridge). This action is necessary to provide for the continued security of the military service members on board vessels moored at the pier, as well as all military members and government property on Coast Guard Island. This security zone will prohibit all persons and vessels from entering, transiting through, or anchoring within a portion of the Oakland Estuary surrounding Coast Guard Island, and prohibit all persons and vessels from loitering within 50 yards of the Coast Guard Island causeway, unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0114 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT William Harris, Sector San Francisco Waterways Management Division, U.S. Coast Guard; telephone 415-399-7443, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Captain of the Port (COTP) San Francisco identified a need to amend the existing security zone to address the security concerns to the military base on Coast Guard Island and the Coast Guard Island causeway. Over the past three years, Coast Guard Island has had over 20 security incidents. Additionally, the Coast Guard no longer uses the Security barrier around the pier and this rulemaking accounts for that change. In response, on February 15, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA” (88 FR 10063). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended March 20, 2023, we received 3 comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential security hazards associated with security incidents on Coast Guard Island.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70051 and 70124. The Captain of the Port Sector San Francisco (COTP) has determined that potential hazards

associated with future security incidents necessitate changes to the existing regulation.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received 3 comments on our NPRM published February 15, 2023. The first comment requested a chart graphic be added to the docket representing the area encompassed by the proposed expanded security zone, which we addressed by publishing the chart graphic to the docket on February 27, 2023. The second comment received was not within the scope of the regulation. The final comment was in support of the proposed expanded security zone. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. The Coast Guard added a sentence to paragraph (b)(2) clarifying that vessels must make direct passage through the security zone for the Coast Guard Island Causeway in addition to not loitering. This addition clarifies that vessels and persons may enter the Coast Guard Island Causeway security zone if they are making direct passage through the area.

This rule amends the established security zone at Coast Guard Island, 33 CFR 165.1190, to cover all navigable waters of the Oakland Estuary beginning at 37°46'42.5" N, 122°14'51.4" W; thence to 37°46'46.6" N, 122°14'59.7" W; thence to 37°46'51.8" N, 122°15'7.4" W; thence to 37°46'56.3" N, 122°15'12.1" W; thence to 37°47'2.2" N, 122°15'16.4" W; thence to 37°47'8" N, 122°15'16.6" W; thence to 37°47'10" N, 122°15'12.8" W; thence to 37°47'10.1" N, 122°15'5.7" W; thence to 37°47'7.8" N, 122°15'0.1" W; thence to 37°47'5.2" N, 122°14'53.7" W; thence to 37°47'2.1" N, 122°14'49.5" W; thence to 37°46'58.9" N, 122°14'46.2" W; thence to 37°46'57.1" N, 122°14'44.6" W; thence to 37°46'52.9" N, 122°14'42.6" W; thence to 37°46'50.2" N, 122°14'42.9" W; thence to 37°46'47.9" N, 122°14'43.6" W; thence to 37°46'42.3" N, 122°14'44.1" W; thence to the beginning, and all navigable waters of the Oakland Estuary 50 yards on either side of a line beginning at 37°46'48.1" N, 122°14'45.8" W; thence to 37°46'46.1" N, 122°14'41.5" W; thence to 37°46'45.4" N, 122°14'36.6" W.

No vessel or person will be permitted to enter the security zone surrounding Coast Guard Island, and no vessel or person will be permitted to loiter in the zone surrounding the causeway

bridge, unless authorized by the COTP. Vessel operators and persons will be able to transit the waters surrounding the causeway bridge without COTP permission, but they will not be allowed to loiter in those waters without the COTP permission.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The effect of this rule will not be significant because vessel traffic will still be permitted to transit around Coast Guard Island, and this rule will encompass only a small portion of the waterway.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone covering all navigable waters of the Oakland Estuary, which will exclude vessels from entering the regulated area unless authorized by the COTP. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Revise §165.1190 to read as follows:

#### **§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.**

(a) *Locations.* The following areas are security zones:

(1) *Coast Guard Island.* All waters of the Oakland Estuary, from surface to bottom, encompassed by a line connecting the following points beginning at 37°46'42.5" N, 122°14'51.4" W; thence to 37°46'46.6" N, 122°14'59.7" W; thence to 37°46'51.8" N, 122°15'7.4" W; thence to 37°46'56.3" N, 122°15'12.1" W; thence to 37°47'2.2" N, 122°15'16.4" W; thence to 37°47'8" N, 122°15'16.6" W; thence to 37°47'10" N, 122°15'12.8" W; thence to 37°47'10.1" N, 122°15'5.7" W; thence to 37°47'7.8" N, 122°15'0.1" W; thence to 37°47'5.2" N, 122°14'53.7" W; thence to 37°47'2.1" N, 122°14'49.5" W; thence to 37°46'58.9" N, 122°14'46.2" W; thence to 37°46'57.1" N, 122°14'44.6" W; thence to 37°46'52.9" N, 122°14'42.6" W; thence to 37°46'50.2" N, 122°14'42.9" W; thence to 37°46'47.9" N, 122°14'43.6" W; thence to 37°46'42.3" N, 122°14'44.1" W; and back to the beginning point. These coordinates are based on North American Datum (NAD) 83.

(2) *Coast Guard Island Causeway.* All waters of the Oakland Estuary, from surface to bottom, 50 yards on either side of a line beginning at 37°46'48.1" N, 122°14'45.8" W; thence to 37°46'46.1" N, 122°14'41.5" W; thence to 37°46'45.4" N, 122°14'36.6" W. These coordinates

are based on NAD 83.

(b) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a)(1) of this section unless authorized by the Captain of the Port (COTP). The security zone described in paragraph (a)(1) of this section is closed to all vessel traffic, except as may be permitted by the COTP. To seek permission to enter the security zone in paragraph (a)(1) of this section, contact the COTP by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399-3547. Those in the security zone must comply with all lawful orders or directions given to them by the COTP.

(2) Under the general security zone regulations in subpart D of this part, you may not loiter in the security zone described in paragraph (a)(2) of this section unless authorized by the COTP. Vessels must make a direct passage through the security zone described in paragraph (a)(2) of this section.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: March 30, 2023

Taylor Q. Lam,

Captain, U.S. Coast Guard,

Captain of the Port, Sector San Francisco.

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